

The regular meeting of the Olmsted Township Board of Zoning Appeals was called to order July 12, 2010 at 7:00PM. Present were Chairman Brian McElroy, Lawrence Maser, Louise Veverka, Herbert McTaggart and James Prosek. Also Present was Building Commissioner Anthony Bumbalis and Secretary Tammy Tabor.

20100316 Donna Anderson- Variance

Danna Anderson was sworn in. Ms. Anderson stated that she would like to construct a barn on her property for a future horse and equipment that she used to maintain her property. Ms. Anderson stated that she purchased additional property and has consolidated the properties to total 14 acres. Ms. Anderson stated that the agricultural use of the property exempts her from zoning requirements. Ms. Anderson stated that the size of the barn conforms to the Olmsted Township Zoning Resolution for residential districts however the height will be between 22 and 24 feet high with a gambrel roof.

Mr. McElroy stated that the size of the proposed barn does not exceed the maximum 1% of the lot size for accessory structures.

Ms. Anderson stated that she is proposing that the structure be placed at least 50 feet from the property line.

Mr. Maser stated that an agricultural use is exempt from zoning on parcels over five acres. Since Ms. Anderson is proposing the use as agricultural, a variance is not required.

Mr. McElroy asked Mr. Bumbalis if the access to the accessory building needs to be paved. Mr. Bumbalis stated that typically, unless vehicles are being stored inside and the structure is being used as a garage it does not need to be paved to the entrance.

Ms. Anderson stated that she would not be storing vehicles inside other than equipment to be used on the property.

Mr. Prosek asked where the equipment is being currently stored. Ms. Anderson stated that she has several small sheds on the property that she would like to move all of the equipment from.

Mr. McElroy asked what section of the Olmsted Township Zoning Resolution covers agricultural determination. Mr. Prosek stated that Section 210 and Section 110 have a definition of agriculture.

Mr. McElroy stated that he believes that the timber and apple trees on the property may constitute an agricultural use. Mr. Prosek stated that the production of crops, forestry and animals on the property constitute agricultural use.

Ms. Anderson stated that she has contacted the Division of Forestry to help her with maintaining the property and cutting timber.

Mr. Prosek asked why the barn will be so tall. Ms. Anderson stated that the building's design has a hay loft on the second floor. Ms. Veverka stated that the truss sizes and the design of a gambrel roof make it taller.

Mr. McTaggart stated that if the structure is exempt from zoning Ms. Anderson should withdraw the application. Mr. McElroy stated that the Board could make a motion to deny based on agricultural use exemption. Mr. McTaggart stated that the Board does not have to act on an application if a variance is not necessary. Mr. Prosek asked if the Board could vote to dismiss based on intended use.

Ms. Anderson requested to withdraw the application due to the agricultural use of the building.

Mr. Prosek moved to accept the request to withdraw the application #20100316 by Ms. Anderson based on the proposed agricultural use of the structure. Seconded by Mr. Maser. Roll call: all approved.

#20100457 Christ Our Righteousness Conditional Use

Dean Cinquemani was sworn in representing Christ Our Righteousness Church. Mr. Cinquemani stated that his church is proposing a facility that offers better living classes as well as a place of worship. Mr. Cinquemani stated that he was before the Board previously regarding the property on Cook Rd., formerly known as Dugan's Garden Center, for the same activity. Mr. Cinquemani stated that the facility was not purchased by Christ Our Righteousness due to the EPA's denial of the use for a community center or church. Mr. Cinquemani stated that the Olmsted Township Board of Zoning Appeals approved the previous request for conditional use at the Cook Rd. site.

Mr. McElroy asked what type of classes the group offers.

Mr. Cinquemani stated that they offer cooking, small engine repair, tax filing, and other depending on the demand or requests from participants.

Mr. McTaggart asked where in the plaza they are proposing to move in. Mr. Maser stated that the site map show that the location would be the old trolleyville office on the side of the plaza.

Mr. McElroy asked when the classes and worship would be held. Mr. Cinquemani stated that they usually have worship services on Saturday and the classed during the week as often as the demand is there. Mr. Cinquemani stated that the philosophy of the group is to offer a better quality of life to the community. The frequency would depend on the need.

Mr. Prosek asked if this would be a for profit facility. Mr. Cinquemani stated that the classes are all at no cost. Mr. McElroy asked if the group is considered a 501C. Mr. Cinquemani stated that they currently have an umbrella exemption but may file for a 501C.

Mr. Prosek asked what church affiliation is the group. Mr. Cinquemani stated Seventh Day Adventist.

Mr. Maser asked how many people usually attend at services. Mr. Cinquemani stated 45-60. If more were in attendance they would add another worship service.

Mr. Maser asked if there is adequate parking for this type of use. Mr. Cinquemani stated that the plaza does not have assigned parking however, several of the units in the plaza are vacant and there is parking in front of the plaza and in the rear of the buildings as well.

Mr. Prosek asked how long the lease is for. Mr. Cinquemani stated 5 years.

Mr. McElroy asked Mr. Bumbalis if the church complies with the requirements for a conditional use in a business district. Mr. Bumbalis stated that the conditional use probably complies with the district requirements. The Olmsted Township Zoning Commission will need to approve the change of use and verify parking for this use.

Mr. McTaggart stated that there is adequate parking in front of the units to the south since they are vacant and the park and ride no longer uses the parking lot.

Mr. Prosek stated that the use would probably be classified as assembly and place of worship.

Mr. McTaggart stated that the management of Columbia Park should be present as well as the applicant.

Jim Carr, Olmsted Township Trustee, was sworn in. Mr. Carr asked where the unit was that the applicant would be occupying. Mr. Cinquemani stated that it was on the south side of the plaza.

Mr. Maser moved to approve application # 20100457, conditional use to allow Christ Our Righteousness to operate in the Columbia Park plaza. Seconded by Ms. Veverka. Roll call: all approved.

#20100497- Cleve West Tel Co Conditional Use

Bill Janowich was sworn in representing Cleve West Tel Co. Mr. Janowich stated that he currently operates a similar facility in Sandusky. Mr. Janowich stated that his operation provides copy and fax services and sells long distance phone cards. Mr. Janowich stated that he is proposing 60 computer terminals that will be available to his customers.

Mr. Janowich stated that there are 82 parking spaces in front and 22 parking spaces in the rear of the building available.

Mr. Prosek asked if how large the space to be occupied is. Mr. Janowich stated there is 3200 square feet available. Mr. Prosek stated that would provide approximately 50 square feet for each computer terminal.

Mr. Janowich stated that there will also be new restrooms, a soda fountain and additional renovations.

Mr. Prosek asked what the proposed use is.

Mr. Bumbalis stated that the retail part seems to be a small portion of the project. Mr. Bumbalis stated that the main activity appears to be an internet café. Mr. Bumbalis said the closest use is assembly and retail.

Mr. Prosek stated that this is not a typical retail use.

Mr. Maser asked if the facility will be open 7 days a week. Mr. McElroy asked if it will be open 24 hours a day. Mr. Janowich stated 7 days a week and about 13 hours a day.

Mr. McTaggart stated that he has a copy of the Toledo case regarding a similar operation. Mr. Janowich isn't familiar with that case, he purchased the equipment from someone else.

Ms. Veverka asked what the hours of operation will be. Mr. Janowich stated 11 AM - midnight.

Mr. Prosek asked if this could be considered commercial recreation. Mr. Janowich stated that it is a legal operation. Mr. Prosek stated that he wasn't questioning the legality, just trying to find the classification for the conditional use.

Mr. Bumbalis stated that it is more of a place of assembly

Mr. McTaggart asked Mr. Carr what the Township's opinion was on this business.

Mr. Carr stated that the Township welcomes any business into the community.

Mr. McTaggart stated that the park should allocate spaces for the businesses to park.

Ms. Veverka stated that the tenant should assure that the parking is adequate for the type of business that is proposed.

Mr. Bumbalis stated that the business owner must assure that there is enough parking provided for the type of business.

Mr. McElroy asked what section of the code. Ms. Veverka stated Section 250.03.

Mr. Janowich stated that the use will be retail. The business is to sell phone cards that will allow people to access internet sites.

The Board discussed the possible classifications of entertainment, assembly and recreation.

Jim Carr was sworn in. Mr. Carr stated that he has been a resident of the park for 10 years and has never seen an issue with parking. Mr. Carr stated that Mr. McTaggart can confirm that there is adequate parking for the church and this facility.

Michael Gareau was sworn in. Mr. Gareau stated that the applicant should provide information stating that the permitted use or conditional use complies with the code.

Mr. Prosek stated that the Board is being asked to authorize a conditional use without specificity, is it a sweepstakes, gambling or phone sales business? Mr. Prosek stated that the phone card sales would classify as a retail business. The internet café has promotional sweepstakes.

Mr. Janowich stated that he submitted a plan showing how he would set up the space. Mr. McElroy asked for any further questions. Hearing none, Mr. McTaggart moved to accept application #20100497 as submitted. Seconded by Ms. Veverka. Roll call: McTaggart-yes, Prosek-No, Veverka-yes, Maser-yes, McElroy-yes.

#2010-0487 Albright Setback Variance

Paul Albright was sworn in. Mr. Albright stated that he would like to concrete his existing gravel driveway. Mr. Albright stated that the driveway currently exists up to the side property line. Mr. Albright stated that the driveway will be 112 feet to the street and 9 feet wide. Mr. Albright stated that the apron in front of the garage is 9 feet wide.

Mr. McElroy asked if the driveway is currently on the property line. Mr. Albright stated yes, it is approximately 1-2 feet away. Mr. Prosek stated that the Board received a letter stating that the neighbor authorizes the paving of a driveway on her property.

Ms. Veverka stated that the Board cannot approve construction on another property. Ms. Veverka asked how far the apron at the street from the property line is. Mr. Albright answered at least 1 foot.

Mr. McElroy asked for any comments or questions. Mr. Albright stated that the driveway has existed since 1956. Ms. Veverka stated that an existing wrong does not perpetrate doing wrong again.

Mr. McElroy asked if the existing driveway can be improved. Mr. Bumbalis stated that the property owner would be able to maintain the existing driveway.

Katie Bowman stated that there is 10 feet between the houses.

Mr. McElroy stated that he is not opposed to approving the driveway construction up to the property line, not crossing it.

Ms. Veverka stated that the Board needs a proper perspective on the tree and property line. Ms. Veverka asked if there was a possibility that the driveway could be narrower at the tree to keep it away from the neighbor's property.

Mr. Maser asked if Mr. Albright had decided on a date for construction. Mr. Albright stated that would be determined according to the cost and the decision of the Appeals Board.

Mr. Prosek stated that he would not authorize construction on the neighbor's property.

Mr. McElroy stated that the driveway is currently along the property line and had been existing since the 1950's.

Mr. McTaggart moved to approve the application for the construction of a driveway, not to encroach onto the neighbor's property. Seconded by Mr. Maser. Roll call: Ms. Veverka-yes, Mr. Maser-yes, Mr. Prosek-yes, Mr. McTaggart-yes, Mr. McElroy-no.

Application#20100507 Norman Marek 27241 Bagley Rd. Expansion of non conforming use

Norman Marek was sworn in. Michael Gareau was present as counsel for the applicant. Jay Bruckner was sworn in. Mr. Bruckner has a contract to purchase the property provided the variance to expand is approved.

Mr. Gareau stated that this request does not require a variance. Mr. Gareau stated that this request is not a use variance or an area variance. This request is to modify an existing residence. Mr. Gareau presented photos of the house as it currently exists. Mr. Maser asked if the house was on the south side of the street. Mr. Gareau stated that the house is on the south side of Bagley Rd. Mr. Gareau asked how long Mr. Marek has lived at the property. Mr. Marek stated that he has lived there 25 years. Mr. Gareau asked how much property in the area are businesses. Mr. Marek stated that down the street is Olmsted Ice, unaware of any other industry in the area. Mr. Marek stated that he does not know of any other businesses in the area. Mr. Prosek asked if the proposal is to add a bedroom and bathroom over the garage. Mr. Prosek asked if the garage was being torn down. Mr. Marek stated that the construction would be over the garage, it would not be removed.

Mr. Prosek asked what the cost of the project would be. Mr. Bruckner stated that he has received two estimates, one for \$68,000 and one for \$60,000.00.

Mr. McTaggart asked who Mr. Bruckner is. Mr. Gareau stated that Mr. Bruckner will purchase the property if the variance is granted. Mr. Gareau stated that he does not believe that this application requires a variance. Mr. McTaggart stated it does. If a non conforming use is expanded.

Mr. Maser stated that a variance cannot be transferred. Mr. Maser asked how Mr. Bruckner can obtain he permit.

Mr. Gareau stated that variances run with the property. Mr. Bruckner stated that if the variances are granted and permits are issued, are the permits transferable? Mr. Bumbalis stated that the permits are not necessarily transferable. The permits cannot be issued to Mr. Bruckner if he is not the contractor or have an interest in the property. Mr. Bumbalis stated that the plans could be submitted and reviewed and the permits issued to Mr. Marek or to a contractor. Mr. McTaggart stated that construction could begin before the title transferred to Mr. Bruckner. The improvements could be done by Mr. Marek and the cost added to the purchase price of the property. Mr. Bruckner stated that he would do the addition when the house has transferred to him.

Mr. Gareau stated that the property is not easy to develop the property as industrial.

Mrs. Tabor stated that next to Mr. Marek's property is JC Sharp, and Margus Construction, Anthony Concrete to the east. Miracle Stone is to the west, AR Trenching across the street. Mrs. Tabor stated that many of the properties along Bagley Road in the area are being used for businesses.

Mr. McTaggart stated that the variance is non transferrable. Mr. McTaggart asked how Mr. Bruckner can obtain the variance. Mrs. Tabor stated that the transfer of the variance may be part of the motion if approved by the Board. Mr. Marek may amend his application to include the request to transfer the variance to Mr. Bruckner upon title transfer of the property.

Mr. Prosek moved to approve application #20100507 as submitted to allow the addition to the existing house as submitted. The Board further approves the transfer of the variance to Jay Bruckner upon the transfer of the property from Mr. Marek. Seconded by Mr. Maser. Roll call: all approved.

Application # 20100509 Fence over Storm Sewer

Ms. Veverka stated that she does not know why the Board is hearing this case. Ms. Veverka stated that she was unaware that there was an Appeals Board for the storm water code. Ms. Veverka stated that she has never seen a storm water code.

Greg Waffen was sworn in. Mr. Waffen stated that he does not understand why he cannot construct a fence in the easement. Other properties have fences in easements.

Mr. McElroy asked what the difference is in this easement. Mr. Bumbalis stated that in this easement there is a storm sewer pipe and some easements are for surface drainage or other utilities.

Mr. McElroy stated that fence posts would be installed approximately every 8 feet.

Ms. Veverka stated that requiring construction outside of the easement the fence would need to be 10 feet from the property line. Mr. Waffen stated that he would lose the use of that area of his yard. Mr. Waffen stated that the fence would then be directly from the corner of his house to the rear of his property.

Ms. Veverka stated that the Home Owners Association has approved construction in the easements since the development was created.

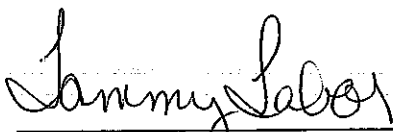
Mr. Prosek stated that the County Sanitary Engineer, County Prosecutor, County Planning Commission, Soil and Water Conservation District as well as Olmsted Township have recommended against allowing fences in storm sewer easements.

Mr. McElroy stated that he was not prepared to hear storm water regulations.

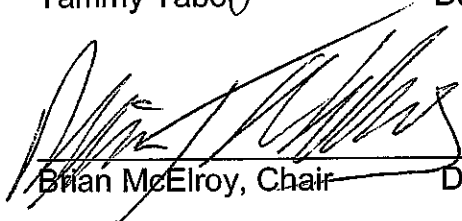
Mr. Waffen stated that he needs the fence, he has a dog and 2 children under 2 ½ years old and a pond in his back yard.

Mr. Maser moved to table application # 20100509. Seconded by Mr. Prosek. Roll call: all approved.

Respectfully submitted,



Tammy Tabor Date 11-17-10



Brian McElroy, Chair Date 11-17-10